



Federal Communications Commission  
Washington, D.C. 20554

May 9, 2007

DA 07-2037

Scott D. Reiter  
738 Pier Ave., Suite P  
Santa Monica, CA 90405

Re: Substantial Service Showing for WPTB505, File No. 0002727118

In this letter, we address the substantial service showing filed by Scott Reiter (Reiter) for the C block broadband Personal Communications Services (PCS) license for the Portsmouth, Ohio Basic Trading Area (BTA359) (License).<sup>1</sup> For the reasons set forth below, we reject the Showing and note that the License automatically terminated on August 22, 2006 due to Reiter's failure to meet the construction requirements of section 24.203(b) of the Commission's rules.<sup>2</sup>

On August 22, 2001, the Commission granted Reiter the License under call sign WPTB505 with a five-year construction deadline of August 22, 2006. Specifically, Reiter was required to meet the construction requirement for the License within five years of initial license grant by providing coverage to at least twenty-five percent of the population of BTA359, or by making a showing of substantial service.<sup>3</sup> In addition, Reiter was required to submit a construction notification within fifteen days of his construction deadline.

On August 25, 2006, Reiter submitted his Showing in response to the five-year construction requirement for the License.<sup>4</sup> Pursuant to a request by the Wireless Telecommunications Bureau's Mobility Division, Reiter supplemented his Showing for the License on January 3, 2007 and January 4, 2007.<sup>5</sup>

Pursuant to sections 1.946(c) and 1.955(a)(2) of the Commission's rules, a broadband PCS license will terminate automatically as of the construction deadline if the licensee fails to meet the requirements of section 24.203 unless the Commission grants an extension request or waiver of the PCS construction requirements.<sup>6</sup> An extension of time to complete construction may be granted, pursuant to section 1.946(e) of the Commission's rules, if the licensee shows that the failure to complete construction is due to causes beyond its control.<sup>7</sup> Furthermore, in recognizing that compliance with the broadband PCS construction requirements may be difficult at times, the Commission stated that, in situations in which the circumstances are unique and the public interest would be served, it would consider waiving

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<sup>1</sup> See File No. 0002727118, filed August 25, 2006 (Showing), and supplemented on January 3, 2007 and January 4, 2007 (Showing Supplement).

<sup>2</sup> 47 C.F.R. § 24.203(b).

<sup>3</sup> *Id.* "Substantial service" is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. 47 C.F.R. § 24.203(d).

<sup>4</sup> Showing.

<sup>5</sup> Showing Supplement.

<sup>6</sup> 47 C.F.R. §§ 1.946(c), 1.955(a)(2), 24.203.

<sup>7</sup> 47 C.F.R. § 1.946. Section 1.946(e) also outlines specific circumstances that would not warrant an extension of time to complete construction. 47 C.F.R. § 1.946(e)(2)-(3).

the PCS construction requirements on a case-by-case basis.<sup>8</sup> Waiver may be granted, pursuant to section 1.925 of the Commission's rules, if the petitioner establishes either that: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that grant of the waiver would be in the public interest; or (2) where the petitioner establishes unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>9</sup>

The Commission has defined "substantial service" as "service that is sound, favorable, and substantially above a level of mediocre service that would barely warrant renewal."<sup>10</sup> When adopting substantial service as an option for 10 MHz (and later 15 MHz) broadband PCS licenses, the Commission indicated that these smaller BTA licenses could be used to provide service to geographic areas or populations that the holders of the 30 MHz licenses that cover the larger Major Trading Areas ("MTAs") may be less likely to cover.<sup>11</sup> The Commission provided the specific examples of "residential, cutting-edge niche services" and "services to business or educational campuses where the population may be small except during business or school hours" as uses of the spectrum that could meet the substantial service benchmark.<sup>12</sup>

In this case, we find that Reiter fails to meet the substantial service requirement of section 24.203 of the Commission's rules. In his Showing, Reiter states that after studying the market at great length, he determined that a "conventional build-out and mobile operation was not viable" and that the market presents "formidable challenges" for yet another mobile service provider.<sup>13</sup> As a result, Reiter states that he decided to address a "niche" in the market by providing free local phone service to the residents of a homeless shelter located in the largest city of the BTA, Portsmouth, Ohio.<sup>14</sup> Reiter states currently there is a single, constructed base station and that four handsets are made available on an "as needed" basis to shelter residents, which could number up to 200 residents annually.<sup>15</sup> Reiter also states that the single base station covers approximately 11.4 percent of the population of the BTA.<sup>16</sup> Based on this coverage, Reiter states that he "should therefore be deemed to have met [his] five-year construction requirement."<sup>17</sup>

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<sup>8</sup> See Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, *Memorandum Opinion and Order*, 9 FCC Rcd. 4957, 5019 (1994) (*PCS MO&O*), citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>9</sup> 47 C.F.R. § 1.925. Alternatively, pursuant to section 1.3, the Commission has authority to waive its rules if there is "good cause" to do so. 47 C.F.R. § 1.3. See also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

<sup>10</sup> The Commission has used this basic definition of "substantial service" in a number of commercial wireless services. See, e.g., 47 C.F.R. § 24.103(d). Because the requirement can be met in a variety of ways, the Commission has stated that it will review substantial service showings on a case-by-case basis.

<sup>11</sup> *PCS MO&O* at 5019.

<sup>12</sup> *Id.* In addition, when responding to questions about broadband PCS C-block licenses, the Bureau pointed out that the substantial service alternative "is specifically tailored for licensees interested in providing 'niche' services, for example, to campuses and business parks where population levels may be small." See Wireless Telecommunications Bureau Staff Responds to Questions about the Broadband PCS C Block Auction, *Public Notice*, No. 54270, 78 RR 2d 727, 732-733 (Jun. 8, 1995).

<sup>13</sup> Showing at 1. Reiter describes the BTA as consisting of two of the "most depressed rural counties in the United States" and that it is "very much in the backwater of the Rust Belt." Furthermore, Reiter cites to declining population figures and the overall socioeconomic status of Portsmouth, Ohio as reasons for Portsmouth being "well below average on positive indicators and well above average on negative [indicators]."

<sup>14</sup> *Id.* at 2 – 3.

<sup>15</sup> Showing Supplement at 1 – 2.

<sup>16</sup> *Id.* at 1.

<sup>17</sup> Showing at 4.

In addition to Reiter's current operations, Reiter states that it may be possible to expand service to include "commercial operations" or expand service to include areas such as a day care center and retired senior volunteers program.<sup>18</sup> In his Showing Supplement, Reiter states the he plans to add up to three additional sites within the BTA to areas that are "commercially underserved."<sup>19</sup> Reiter states that one site could be "implemented" almost immediately after Commission action is taken on his Showing and would provide possible coverage to another 2,420 people, which would result in total population coverage of approximately fifteen percent of the BTA.<sup>20</sup>

We find that Reiter has not demonstrated the provision of substantial service to the licensed area. Reiter made the decision to provide coverage in and around areas that as he concedes are already covered by numerous providers in a city with the largest, most concentrated population of the BTA.<sup>21</sup> Although Reiter states that a "conventional build out and mobile operation was not viable," Reiter elected to provide a conventional two-way mobile phone service that is not unlike what other broadband PCS licensees provide except that in Reiter's case, local phone service is free using the four handsets that are in service. Reiter has failed to demonstrate that operations confined to a single base station at a single location with four activated handsets is "service that is sound, favorable, and substantially above a level of mediocre service that would barely warrant renewal" or, in the alternative, that is "cutting-edge," a "niche service" or otherwise.

Furthermore, although Reiter asserts that additional coverage may be provided in the future, as of his construction deadline, Reiter had not constructed additional facilities and therefore the possible expansion that Reiter contemplates is not material to his Showing, which is based on Reiter's construction in the BTA as of the five-year construction deadline. Finally, Reiter has not demonstrated how either prong of the Commission's waiver standard has been met and therefore has not justified a waiver of the PCS construction requirements.<sup>22</sup> Because Reiter failed to meet his construction requirements, the License terminated automatically on August 22, 2006.<sup>23</sup>

As a final matter, on our own motion, we grant Reiter and Strata8 Networks, Inc.<sup>24</sup> special temporary authority for thirty days from the date of this letter (*i.e.*, until June 8, 2007) in order to provide time for an orderly transition of Reiter's limited operations as well as Strata8's operations.

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<sup>18</sup> *Id.*

<sup>19</sup> Showing Supplement at 2.

<sup>20</sup> *Id.* at 1.

<sup>21</sup> Based on the 2000 Census, Scioto, Ohio, which is where Portsmouth is located, has a population density of 129 persons per square mile, which does not fall within the Commission's baseline definition of what constitutes a "rural area." See Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services, *Report and Order*, 19 FCC Rcd. 19078, at 19087- 19088 (2004).

<sup>22</sup> Reiter states that no waiver of section 24.203 appears to be required; however, if such a waiver is required, Reiter requests a waiver based on the reasons set forth in his Showing. See Showing at note 1.

<sup>23</sup> 47 C.F.R. § 1.955(a)(2).

<sup>24</sup> Reiter entered into a spectrum lease with Strata8 Networks, Inc. that commenced on March 10, 2007 and is set to expire on May 31, 2007. See File No. 0002929397.

Based on the foregoing, we reject the substantial service showing and dismiss the underlying notification of construction, File No. 0002727118, filed by Scott Reiter on August 25, 2006 and notify Scott Reiter that call sign WPTB505 terminated automatically on August 22, 2006. This action is taken pursuant to delegated authority under sections 0.131, 0.331, 1.925, 1.955 and 24.203 of the Commission's rules.<sup>25</sup>

Sincerely,

Thomas Derenge  
Deputy Chief, Mobility Division  
Wireless Telecommunications Division

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<sup>25</sup> 47 C.F.R. §§ 0.131, 0.331, 1.925, 1.955, 24.203.